

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Establishing Rules and Policies For the Use of  
Spectrum for Mobile Satellite Service in the  
Upper and Lower L-Band

IB Docket No. 96-132

DOCKET FILE COPY ORIGINAL

To: The Commission

**CONSOLIDATED REPLY OF MOTOROLA, INC. AND IRIDIUM LLC  
ON MOTION TO REFRESH THE RECORD**

Motorola, Inc. ("Motorola") and Iridium LLC ("Iridium") hereby respectfully reply to the oppositions filed by AMSC Subsidiary Corporation ("AMSC"), COMSAT Corporation ("COMSAT"), and Inmarsat Ltd ("Inmarsat") to the Motion to Refresh the Record ("Motion") of Motorola and Iridium.<sup>1</sup> In addition, Motorola and Iridium note that Globalstar, L.P. and L/Q Licensee, Inc. (collectively "Globalstar") have filed comments fully supporting grant of the Motion.<sup>2</sup>

The oppositions filed by AMSC, COMSAT and Inmarsat do not refute the demonstration made by Motorola and Iridium that conditions in the satellite market, and in

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<sup>1</sup> See Opposition of AMSC Subsidiary Corporation to Motion to Refresh the Record (Apr. 28, 1999) ("AMSC Opposition"); Opposition of COMSAT Corporation to "Motion to Refresh the Record" (Apr. 26, 1999) ("COMSAT Opposition"); Opposition of Inmarsat Ltd to "Motion to Refresh the Record" (Apr. 28, 1999) ("Inmarsat Opposition").

<sup>2</sup> See Comments in Support of Motion to Refresh the Record (Apr. 26, 1999) ("Globalstar Comments").

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particular conditions affecting mobile satellite service (“MSS”) in the L-band, have changed in a manner that substantially undermines the tentative conclusions of the Commission in the L-Band NPRM.<sup>3</sup> Under clear precedent that no party to this proceeding has questioned, the Commission must take action to ensure a complete record that reflects these changed conditions.<sup>4</sup>

Accordingly, the Commission should grant the Motion of Motorola and Iridium and issue a Further Notice of Proposed Rulemaking (“FNPRM”) seeking comments on the changes in the conditions affecting the L-band and on the appropriate Commission policies for that band.

### **I. The Commission Must Not Ignore Changed Circumstances**

AMSC does not attempt to rebut the showing of changed circumstances in the Motion. Instead, AMSC ignores the changed circumstances, contending that the Commission should guarantee AMSC access to 20 MHz of spectrum (10 MHz in each direction) in order to promote stability and to protect AMSC’s investment in its satellite system. See AMSC Opposition, at 1-2. AMSC argues:

The current spectrum needs of Iridium and AMSC [and presumably other operators] ... should not be the issue. All that should matter at this early stage for both companies and for the public interest is having stable Commission spectrum access policies.<sup>5</sup>

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<sup>3</sup> Establishing Rules and Policies For the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-Band, 11 FCC Rcd. 11675 (1996) (“L-Band NPRM”).

<sup>4</sup> See Motion at 7-9. Just a few days ago, the Commission issued a public notice requesting further comments to refresh the record in a payphone proceeding. See The Common Carrier Bureau Asks Parties to Update and Refresh Record for the Inmate Payphone Service Proceeding, Public Notice, CC Dkt. No. 96-128, DA 99-841 (rel. May 6, 1999).

<sup>5</sup> AMSC Opposition, at 2. Contrary to AMSC’s claim that its operations are at an “early stage,” AMSC has had a substantial opportunity to develop its business over nearly four years of operations (during which time it has missed various milestones). See Motion at 7. It is particularly inappropriate on this point for AMSC to compare itself to Iridium, which has been in operation only six months.

Motorola and Iridium agree that the public interest is served by stable Commission policies. But that does not mean that the Commission should not have relevant, accurate and current information before it when it considers what policies it should adopt. As the Commission has explicitly noted, “[t]his is a rulemaking proceeding to develop policies for assignment of spectrum . . . .”<sup>6</sup> The essence of a rulemaking proceeding is to evaluate whether new policies or policy changes are appropriate, in light of all relevant information. In making such policy decisions, the Commission simply cannot act upon a stale record and ignore changes in technological, economic or other conditions in the market.

Furthermore, while stability in the licensing process is a worthy goal, it does not follow that regulatory policies cannot change when circumstances so warrant. For example, the Commission recently proposed to change its spectrum management policies to permit sharing by geostationary orbit (“GSO”) and non-geostationary orbit (“NSGO”) satellite systems in the Ku-band.<sup>7</sup> Likewise, Congress has required television broadcasters to surrender existing spectrum in connection with the transition to digital television. See 47 U.S.C. § 336(c). In the present proceeding, Motorola and Iridium believe that a complete record will show changed technological, economic and other conditions that warrant changes in the tentative conclusions proposed by the Commission nearly three years ago.

The Commission should not be swayed by AMSC’s argument that changes to L-band spectrum policies would interfere with the “reasonable expectation” of AMSC investors. See AMSC Opposition, at 1. **First**, there is no evidence that AMSC investors would suffer any

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<sup>6</sup> L-Band NPRM, 11 FCC Rcd. at 11687.

<sup>7</sup> See Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range, FCC 98-310 (rel. Nov. 24, 1998); see also Globalstar Comments, at 3.

harm from changes in L-band spectrum policies (other than the effects of increased competition), because, as COMSAT points out, AMSC has never provided any data to demonstrate its need for the spectrum that it claims. See COMSAT Opposition, at 8. **Second**, AMSC has no permanent authorization to operate in the lower L-band, and its investors can have no established expectation regarding access to that spectrum.<sup>8</sup> **Third**, AMSC's existing authorization for the upper L-band explicitly recognized the risks inherent in the international coordination process.<sup>9</sup>

## **II. COMSAT and Inmarsat Do Not Demonstrate That the Changed Circumstances in the L-Band Have Limited Relevance or Have Already Been Addressed**

COMSAT and Inmarsat oppose the Motion on the ground that the changed circumstances identified by Motorola and Iridium either have limited relevance to this proceeding or have already been addressed in this or other Commission proceedings.<sup>10</sup> However, COMSAT and Inmarsat are able to make this argument only by ignoring or downplaying important changed circumstances identified by Motorola and Iridium. Indeed, several of the points made by COMSAT and Inmarsat demonstrate the existence of changed circumstances and the need for further comments in this proceeding.

The COMSAT and Inmarsat Oppositions are best examined in terms of the four primary rationales for the policies proposed in the L-Band NPRM: (1) the lack of availability of

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<sup>8</sup> See 47 U.S.C. § 301 ("No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio ... except ... with a license ... granted under the provisions of this Act.").

<sup>9</sup> See Amendment of Parts 2, 22 and 25 of the Commission's Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, 4 FCC Rcd. 6041, 6056-57 (1989).

<sup>10</sup> COMSAT Opposition at 4; Inmarsat Opposition at 4.

L-band spectrum, (2) the limitation of the L-band to GSO MSS, (3) the advantageous position of AMSC as a U.S. provider of MSS, and (4) the need to provide AMSC a “fair opportunity to compete.”<sup>11</sup>

**First**, on the issue of the availability of L-band spectrum, Inmarsat and COMSAT argue that the only relevance for spectrum management of the transformation of Inmarsat to a private company – which is unquestionably a changed circumstance in the L-band – is that Inmarsat no longer participates directly in the international coordination process.<sup>12</sup> Although this is understandably the position of Inmarsat and COMSAT, there are also persuasive reasons to conclude that Inmarsat’s longstanding intergovernmental status and ongoing privatization (which is planned to include an initial public offering whose value will be maximized if Inmarsat retains maximum spectrum) impact L-band spectrum management in other ways. All market participants should have the opportunity to comment on these issues in the present proceeding.

COMSAT also suggests that Motorola and Iridium mean to “put [AMSC] out of operation” by proposing a change to L-band spectrum policy. COMSAT Opposition, at 5. This rhetoric is certainly unwarranted. The issue raised by Motorola and Iridium is not whether AMSC should have enough spectrum to operate (obviously, it should), but rather whether the

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<sup>11</sup> See Motion at 3-4. COMSAT argues that “Motorola and Iridium ... pick and choose language from the NPRM they describe as showing the Commission’s ‘four principal reasons’ for its proposed policy.” COMSAT Opposition at 2. This argument is puzzling. The four reasons cited in the Motion are simply those identified by the Commission itself as the basis for its L-band policy proposals – *i.e.*, the basic stated reason for the policies, see L-Band NPRM, 11 FCC Rcd. at 11680 (“Our doubts about whether there is enough spectrum to sustain yet another system in the L-band lead us to propose rules for the lower L-band ...”), and the three supporting reasons, see id. (“There are three reasons for pursuing this policy.”).

<sup>12</sup> Inmarsat Opposition, at 4; COMSAT Opposition, at 6.

amount of additional spectrum that the Commission has proposed to reserve for AMSC is appropriate in view of changes affecting systems operating in the L-band.

**Second**, on the issue of whether the L-band should be limited to GSO MSS, COMSAT and Inmarsat contend that the Commission's proposal to allocate the 2 GHz band to both NGSO and GSO MSS merely illustrates the crowding of the L-band and the impracticability of NGSO allocations in the L-band.<sup>13</sup> To the contrary, the availability of a new spectrum allocation at 2 GHz does not demonstrate anything about the crowding of existing L-band spectrum. Indeed, if the 2 GHz rulemaking had been delayed, COMSAT and Inmarsat would have presumably made the opposite argument – that the unavailability of spectrum in the 2 GHz band increases crowding in the L-band. The relevant point is that the 2 GHz rulemaking plainly supports the feasibility of spectrum sharing by NGSO and GSO MSS systems and is unquestionably a new development since the L-Band NPRM, which COMSAT and Inmarsat do not dispute.<sup>14</sup>

Inmarsat also argues that ITU Region 1 and 3 coordination agreements indicate that the Commission should not reexamine the allocation of the L-band to GSO systems.<sup>15</sup> To the contrary, these coordination agreements illustrate that a global spectrum allocation (appropriate for an NGSO system) is possible in the L-band, since both Inmarsat and Volna (the Russian operator) are reported to have coordinated global L-band spectrum. Furthermore, the

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<sup>13</sup> COMSAT Opposition, at 7; Inmarsat Opposition, at 4.

<sup>14</sup> See Motion at 5-6; see also Globalstar Comments, at 3.

<sup>15</sup> Inmarsat Opposition, at 5. As a global operator in the spectrum at issue here, Inmarsat is in a far better position than other participants in this proceeding (including Iridium, which operates in adjacent spectrum) to have information on these coordination issues. Yet Inmarsat provides no citation or other evidence regarding coordination agreements in Regions 1 and 3.

Region 1 and 3 coordination agreements are a relatively new development that was not addressed in the L-Band NPRM. Thus, this is exactly the type of issue that is an appropriate subject for an FNPRM in this proceeding. Certainly, the assertions of Inmarsat on this point (without citation) would not support a refusal by the Commission to solicit the views of other parties (including the participants in the L-band coordination agreements) on this and other issues.

More generally, the central theme of the Inmarsat Opposition is that L-band crowding and the existence of international coordination negotiations regarding the L-band are circumstances that already existed at the time of the L-Band NPRM. See Inmarsat Opposition, at 2-3. Motorola and Iridium do not disagree. However, in order to participate effectively in international coordination of L-band spectrum, the U.S. must have rational domestic L-band spectrum policies – which is the matter at issue in the L-Band NPRM. As Motorola and Iridium have explained, current U.S. policies for the L-band place U.S. operators at a significant disadvantage in international coordination and are outdated in view of changes since the L-Band NPRM. See Motion at 6. These changes indicate the need for further comment in this proceeding.

**Third**, concerning the issue of whether AMSC is the best-situated U.S. provider of MSS, COMSAT argues that the focus must be on AMSC's investment rather than on the availability of other service providers. COMSAT Opposition, at 7-8. However, as Motorola and Iridium explain above and in the Motion, AMSC's investment cannot guarantee it a perpetual U.S. monopoly in the L-band (particularly in the lower L-band, where AMSC has never received permanent authority to provide service). See Motion at 6-7. Indeed, the Commission has apparently recognized this by placing on public notice applications for new uses of the L-band,

but it has not done so in a way that provides fair opportunities to all potential L-band applicants. See Motion at 9-12.

Inmarsat contends that the Commission knew at the time of the L-Band NPRM of the “possibility” of market entry by other U.S. MSS providers. Inmarsat Opposition, at 5. This argument misses the point, which is that the Commission in the L-Band NPRM relied on the conclusion that “no other potential licensee in the lower L-band will be able to provide service for years.”<sup>16</sup> The fact that Iridium is now providing service in the immediately adjacent band (and Globalstar soon will be) is an important changed circumstance that is properly addressed through an FNPRM.

**Fourth**, with respect to the issue of whether AMSC has had a “fair opportunity to compete,”<sup>17</sup> COMSAT argues that AMSC’s system design has not changed since the time of the L-Band NPRM and that Motorola and Iridium have not offered any facts concerning AMSC’s business performance. COMSAT Opposition, at 8-9. The first point is simply irrelevant – AMSC will have the same system design at the end of its license term, but this will not mean that it has not had a fair opportunity to develop its business. On the second point, fairly extensive data are available in AMSC’s annual report, which is filed with the Securities Exchange Commission and is cited in the Motion.<sup>18</sup> In any event, AMSC’s “fair opportunity to compete” would not end if the Commission recognizes the changed circumstances in the L-band and

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<sup>16</sup> L-Band NPRM, 11 FCC Rcd. at 11681.

<sup>17</sup> Id.

<sup>18</sup> See AMSC SEC Form 10-K for Fiscal Year Ended Dec. 31, 1998 (Mar. 30, 1999) (discussing AMSC business operations and financial results); Motion at 7 n.11.



solicits comments on how to promote competition in the L-band, rather than continuing to protect AMSC from competition. See Motion at 7.

### **III. Motorola and Iridium Are Not Seeking to Block Market Entry**

At the end of its opposition, Inmarsat states that “Part IV of the Motion appears simply to be an attempt by Iridium to block access to the U.S. market by other domestic and foreign competitors . . . .” Inmarsat Opposition, at 5. It is unwarranted for Inmarsat to characterize the legitimate attempts of Motorola and Iridium to seek access to L-band spectrum as anticompetitive behavior. Indeed, it is particularly inappropriate for Inmarsat to do so in light of the reasonable alternative proposal of Motorola and Iridium that the Commission accommodate current applicants in the upper L-band. See Motion at 11. The Commission should ignore Inmarsat’s unjustified attack and consider the Motion on the merits, which demonstrate that significant changed circumstances have rendered the record in this proceeding stale.

### **IV. Conclusion**

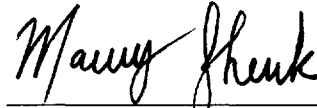
Nearly three years ago, the Commission adopted the L-Band NPRM and solicited comments on licensing and coordination policies for the L-band. No order has been issued. The L-Band NPRM remains pending but the information collected almost three years ago is no longer current. It is entirely consistent with precedent and definitely in the public interest for the Commission to seek new comments and refresh the record in this proceeding, before issuing an order based on a stale, outdated record.

For the reasons set out above and in the Motion, Motorola and Iridium submit that the Commission should issue an FNPRM, requesting additional comments on the issues discussed in the Motion, any other conditions affecting MSS service in the L-band, and the appropriate Commission policies to encourage a robust and competitive MSS market.

Furthermore, pending completion of this proceeding and initiation of a lower L-band processing round, the Commission must not grant any of the pending applications for use of the lower L-band. If it grants such applications, the Commission should do so only by accommodating these applicants in available upper L-band spectrum.

Respectfully submitted,

**Motorola, Inc.**

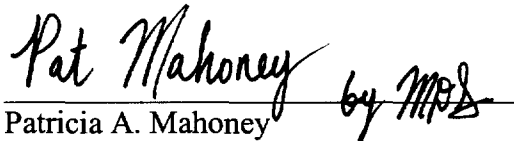


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May 10, 1999

**CERTIFICATE OF SERVICE**

I, Karen J. Pettapiece, hereby certify that the foregoing Consolidated Reply of Motorola, Inc. and Iridium LLC on Motion to Refresh the Record was served this 10th day of May 1999, by hand delivery (or first class mail where indicated by an asterisk (\*)) on the following:

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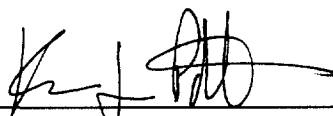
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